IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 20250 of 1999

Between:

Syed Azad, s/o. Mir Abbas Ali,

R/o. Hyderabad.

..... PETITIONER

AND

1)The Divisional Security Commissioner, Railway Protection Force, South Central Railway, Secunderabad Division, Secunderabad.

2)The Deputy Chief Security Commissioner, Railway Protection Force, South Central Railway, Railnilayam, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ, order or direction more particularly one in the nature of Mandamus or any other appropriate writ declaring the action of the first respondent in passing compulsory retirement order vide Divisional Order No. 2/98 (X/SC/227/153/3/97) dated 27.01.1998 which was confirmed vide proceedings Force Order No. 116/98 (X/P. 227/Appeal/98-03) dated 11.06.1998 under Rule 21(1) of Railway Services (Conduct) Rules, 1966, is illegal, arbitrary and violative of Articles 14, 16 and 25 of the Constitution of India and consequently direct the Respondents to reinstate the petitioner into service with all consequential, incidental benefits including seniority, promotion, back wages, etc. forthwith.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents : MR.GOURI SHANKAR SANGHI , S.C. for respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 20250 of 1999

O R D E R :

Heard Sri J.M. Naidu, learned counsel appearing for the petitioner and Sri Gowri Sankar Sanghi, learned standing counsel appearing on behalf of the respondents.

The petitioner, who has been working as R.P.F. Constable with the respondents, filed this Writ Petition, *inter alia,* seeking for a Writ of Mandamus declaring the action of the first respondent in imposing the punishment of compulsory retirement under the orders dated 27.01.1998 and as confirmed in appeal as per the order dated 11.06.1998, as bad and illegal, and for further direction to reinstate him into service with all consequential benefits.

The case of the petitioner is that he was initially appointed on 18.11.1979 and he married S.Parveen on 10.10.1982 as evident from the service record. However, on the basis of a complaint by her, a charge sheet was issued on 16.09.1987 on the ground that he contacted second marriage with one Ms. Nirmala. Thereupon, an enquiry was conducted on appointment of an Enquiry Officer, who submitted his report on 26.02.1987 holding that the charges are not proved. In spite of the same, the first respondent, disagreeing with the findings of the Enquiry Officer, passed orders of removal on

31.10.1988 as communicated to the petitioner vide letter dated 05.11.1988. As against the said orders of removal, the petitioner filed appeal before the second respondent and the same was allowed on 26.12.1989 with a direction to reinstate him, but without prejudice to the authorities to take action after issuance of necessary show-cause notice. The petitioner was reinstated as per the order dated 01.01.1990 by the Divisional Order and thereafter he was given a show cause notice on 17.01.1990 once again. This was challenged in Writ Petition No.115 of 1990 at which time as per the orders dated 26.12.1989, a fresh enquiry was ordered. The said Writ Petition was disposed of with direction to file his explanation and further to reinstate him into service immediately. Accordingly, he was taken back to duty on 12.12.1990, but calling upon the petitioner to file explanation as per the letter dated 13.02.1990. The petitioner submits that he filed explanation on 16.02.1990. However, as per the orders dated 01.03.1990, the petitioner was removed from service without properly considering the explanation and the said order was also confirmed in appeal on 23.10.1990. This action was challenged again in Writ Petition No. 2472 of 1992 which was disposed of as per the order dated 11.10.1997 setting aside the orders of removal dated 01.03.1990 and 23.11.1990. However, the petitioner was kept under suspension under Rule 137 of the R.P.F. Rules with effect from 01.03.1990 and he was paid with 50% of salary as subsistence allowance with effect from that date. This was followed up by issuance of fresh charge sheet dated 06.02.1997 and appointing an Enquiry Officer. There was a change in the Enquiry Officer from one Imtiaz Ahmed to that of Y.V. Rao, who conducted the enquiry on the basis of talaknama dated 03.05.1995 given by the said Syed Nirmala, without examining the witnesses and submitted a report holding that the charge is proved. The petitioner had submitted his own explanation again denying the allegations. However, the first respondent herein intervened and remitted the matter for fresh enquiry by examining Sri B. Venkataswamy (ASI). Thereafter, a perfunctory enquiry was conducted and again a report was submitted on 24.12.1997 without giving findings whether the charge is proved

or not. Though the petitioner gave his own representation as against the charges framed against him, ultimately the impugned orders are passed on 27.01.1998 giving effect to compulsory retirement. As against the same, the petitioner filed an appeal. However, without considering his objections raised, the appeal was rejected on 11.06.1998. These proceedings are under challenge in the present Writ Petition, *inter alia,* on the ground that there can not be a fresh enquiry again and again to fill up gaps, more so, when the said Syed Nirmala was not being examined and no original of alleged talaknama having been produced, the petitioner can not be found guilty. Further, compulsory retirement is a punishment, which is totally disproportionate to the gravity of the charge, and the increments also could not have been withheld. On the date of issuance of charge sheet on 06.02.1997, the petitioner was not having any second wife. Further, there is also no evidence or any material to show that there was a marriage of the petitioner with the said Syed Nirmala and also in regard to her identity with that of Asma Begum. It is also submitted that as per the Personal Law, the petitioner is entitled to marry more than one woman and therefore, Rule 21(1) of the Railway Services (conduct) Rules, 1966 is quite contrary to the Personal Law. Hence, the Writ Petition.

The learned counsel appearing for the petitioner strenuously contended that the alleged talaknama or even the marriage with Syed Nirmala was not proved, apart from failure on the part of the authorities to establish the identity between the two. That apart, having regard to the findings already given in favour of the petitioner holding that the charges were not proved earlier, there could not have been any such enquiry afresh by reopening the case and even otherwise, the punishment of compulsory retirement is quite onerous and has no nexus to the gravity of the offence alleged against the petitioner. It is further contended that the entire approach as made by the authorities consistently, is not in terms of the law and therefore, the same is vitiated.

Sri Gowri Sankar Sanghi, learned standing counsel appearing on

behalf of the respondents, sought to sustain the impugned action on the ground that there is no serious dispute in regard to marriage of petitioner with Syed Nirmala and even in regard to talaknama obtained from her and therefore, such a marriage second time, is contrary to the Rules concerned, and therefore, the impugned orders are perfectly valid.

Considering the submissions made on either side and perusal of the material would lead to the question as to whether the impugned action of imposing punishment of compulsory retirement from service is sustainable on the facts and circumstances of the case?

There is no denial to the fact that the petitioner has been the employee of the respondents and also the initiation of proceedings against him on the ground of contacting second marriage with Syed Nirmala. The entire sheet anchor of the case of respondent is based upon the said talaknama. No doubt, on the earlier occasion when the enquiry was ordered, a report was given on 26.02.1987 that the allegations are not proved, and still the authorities, disagreeing with the findings of the Enquiry Officer, sought to remove the petitioner from service as per order dated 31.10.1988. Subsequently, the appeal filed by the petitioner as against the said order was allowed on 26.12.1989. In support of the petitioner's contention, reliance was sought to be placed on decision of this Court in *N.Subraman v. Chairman, Vishakhapatnam, Port Trust & others,* wherein this court on consideration of entire facts and material, held that since the concerned and other witnesses, having not been examined, the punishment imposed is illegal for want of positive evidence and therefore, quashed the orders of compulsory retirement.

It may not be out of place to mention that this matter had been disposed of earlier by this Court as per the Judgment dated 20.11.2002 dismissing the Writ Petition holding that imposition of punishment of compulsory retirement is not a punishment even though the same is result of enquiry and the employee shall not be

treated as if he was sent out with a stigma. As against such order, an appeal was taken to a Division Bench of this Court and as per order dated 19.11.2003 in Writ Appeal No. 2017 of 2003, the Division Bench allowed the same holding that dismissal of the Writ Petition is not correct and the premise on which the Writ Petition was dismissed that compulsory retirement is not a punishment even though the same was followed by enquiry, is not in consonance with law since such imposition of punishment is after holding the petitioner guilty of charges but not a simplicitor as such. Therefore, allowing the appeal, the matter was remitted back for fresh consideration on merits in accordance with law. Thereafter, the matter was posted and after hearing both sides, the aforesaid question was gone into.

It is seen from the record that there is no serious dispute in regard to marriage of petitioner with said Syed Nirmala or even the alleged talaknama executed by the petitioner. However, it is the case of the petitioner that the said Syed Nirmala has shown the petitioner's name as husband for other benefits though there is no marriage strictly. Further even otherwise, the petitioner being a muslim, can marry more than one. Further, even the said marriage is no longer in force having regard to the talaknama and thus, there is no warrant for imposition of serious and extreme punishment of compulsory retirement which is absolutely no nexus with the gravity

of the offence. Having regard to the fact that there is no serious attempt on the part of the petitioner in denying the very talaknama, which was pressed into service and which goes to show that the said marriage no longer subsists. The fact that there was a marriage or not, goes into the back ground and the factum of marriage as such also recedes back. However, the main question as arose in this Writ Petition, as to the quantity of punishment to be imposed on the facts of the case, has not been properly kept in view. Taking into account the totality of the circumstances and other circumstances, especially the decision of this Court as sought to be pressed into service in Writ

Petition No.2120 of 1998 dated 18.08.1999 wherein this Court considering the question in similar circumstances, held that the punishment of compulsory retirement is quite disproportionate to the offence alleged to have been committed by the petitioner and in its place, this Court, even accepting the alleged bigamy, held that punishment of stoppage of two increments with cumulative effect, would be sufficient. It can also not be denied that the petitioner belonging to muslim community, could have married more than one wife, but the factum is that the said marriage is one without any prior permission or intimation to the authorities concerned. Therefore, on a reappraisal of the circumstances and there being no serious denial of the alleged talaknama, and placing reliance on the aforesaid decision, imposition of punishment of stoppage of two increments with cumulative effect, would be sufficient for the allegations as made against the petitioner, instead of removing him from service by way of compulsory retirement.

The Writ Petition is, accordingly, partly allowed, confirming the findings against the petitioner in regard to violation of the due requirements as contemplated under the Regulations, however, the interdiction is only to the extent of quantum of punishment, and the order of removal by compulsory retirement is set aside and in its place punishment of stoppage of two increments with cumulative effect is imposed. No costs.

(B.Prakash Rao, J.)

14.02.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this

Monday the fourteenth day of February Two thousand and five..

… Registrar

/true copy/

Section Officer.

Copy to:

1)The Divisional Security Commissioner, Railway
Protection Force, South Central Railway, Secunderabad
division, Secunderabad.

2)The Deputy Chief Security Commissioner, Railway
Protection Force, South Central Railway, Railnilayam, Secunderabad.

3)The Chief Security Commissioner, RPF, S.C.Rly., Railnilayam,
Secunderabad.

4) Two CD copies.